

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Deniz Bolbol, et al.,

NO. C 04-00082 JW

Plaintiffs,

v.

City of San Jose, et al.,

Defendants.

**ORDER DENYING PLAINTIFFS'
MOTION FOR LEAVE TO FILE
THIRD AMENDED COMPLAINT**

On the evening of January 6, 2006, Plaintiffs filed a Motion for Shorten Time for a hearing on their Motion for Leave to file a Third Amended Complaint. Plaintiffs requested that the underlying motion be heard on January 9, 2006, the day before the trial for this case was scheduled to commence. Since Plaintiffs' motion was filed after the Court's business hours, the Court was unable to respond to it. (See Docket Item No. 199.)

On the morning of January 9, 2006, HP Pavilion Management filed its opposition to Plaintiff's motion to amend. The city of San Jose has yet to file any opposition, but counsel for the City did appear on January 9, 2006 to challenge the motion. The Court did not call the case because

1 the Court had not approved the motion shortening time. Accordingly, Plaintiffs' Motion for Shorten
2 Time is moot.

3 On January 10, 2006, when the parties appeared at 9 a.m. for jury selection, Plaintiffs orally
4 made their motion for leave to file the Third Amended Complaint. Plaintiffs essentially contend that
5 in light of newly discovered evidence, they wish to amend their complaint to add a cause of action
6 under California Civil Code 52.1. The Court took the motion under submission for consideration.

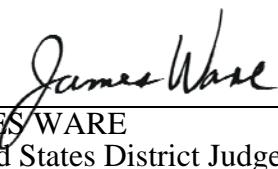
7 On January 11, 2006, the Court issued an order regarding the objections Defendants had
8 made in answering Plaintiffs' Corrected Second Amended Complaint. (See Docket Item No. 209.)
9 That Order was intended to address Plaintiffs' error in leaving out a claim under the California
10 Liberty of Speech Clause only, not Plaintiffs' Cal. Civ. Code § 52.1. However, the Court had
11 inadvertently interchanged the two statutes. By this Order, the Court corrects its typographical
12 error. Plaintiffs' Corrected Second Amended Complaint remains the operative Complaint with the
13 additional claim of a violation under the California Liberty of Speech Clause and Plaintiffs' prayer
14 for relief for this claim is limited to a declaratory or injunctive judgment.

15 With respect to Plaintiffs' Motion for leave to file a Third Amend Complaint to add Cal. Civ.
16 Code § 52.1, the Court made its ruling on the record during the January 17, 2006 proceedings.
17 Essentially, the Court found that unlike their California Liberty of Speech Clause claim, Plaintiffs
18 have indeed abandoned their Cal. Civ. Code § 52.1. In their Application to File Second Amended
19 Complaint, Plaintiffs stated that: "Plaintiffs' proposed amended complaint responds to the City's
20 motion for judgment on the pleadings by (1) specifying the City policy underlying Plaintiffs' action
21 under 42 U.S.C. 1983 and (2) withdrawing Plaintiffs' causes of action under California Civil Code
22 section 52.1(a)." (See Docket Item No. 93, at 6, fn.2.) Clearly, Plaintiffs had voluntarily withdrawn
23 this claim.

24 With respect to Plaintiffs' contention they would not have abandoned this claim had
25 Defendants properly produced the electronic mail for which they rely upon for this motion,
26 Plaintiffs' statement in their moving papers proves fatal to this argument. Plaintiffs state: "Plaintiffs
27

1 in this motion thus request only that they be permitted to add a cause of action to the complaint
2 whose elements have already been fully explored in discovery in the context of other asserted
3 claims." (See Docket Item No. 201, at 3.) This statement demonstrates that the electronic mail
4 Plaintiffs so heavily relied upon adds nothing new to the information Plaintiffs have had in their
5 possession. It appears that the subject matter of the August 29, 2003 electronic mail has long been
6 known to Plaintiffs. Thus, if the elements for the cause of action have already been fully explored in
7 discovery, Plaintiffs have had ample time to ask for leave to amend their complaint to reassert the
8 Cal. Civ. Code § 52.1 claim. Plaintiffs did not raise this issue with the Court during either the
9 Preliminary Pretrial Conference nor the Final Pretrial Conference. Accordingly, the Court DENIES
10 Plaintiffs' Motion for Leave to file a Third Amended Complaint.

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12 Dated: January 18, 2006
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JAMES WARE
United States District Judge

United States District Court

For the Northern District of California

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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21 **Dated: January 18, 2006**

22 **Richard W. Wieking, Clerk**

23 **By: /s/ JW Chambers**
24 **Melissa Peralta**
25 **Courtroom Deputy**